the woman was asleep when the act was committed. *State* v. *Welch,* 191 Mo. 179, 89 S. W. 945. Also where the consent was obtained by means of a sham marriage, it was rape. *Lee* v. *State,* 44 Tex. Cr. Rep. 354, 72 S. W. 1005.

DIVORCE—RECRIMINATION—MISCONDUCT RESULT OF ACTS OF OTHER PARTY. —A husband, guilty of adultery, sued for a divorce for his wife's desertion. *Held,* though the statutory period of desertion had elapsed before the adultery was committed, and though the adultery was a result of the abandonment, the husband may not obtain a divorce. *Green* v. *Green* (Md.), 93 Atl. 400.

It was argued that the rights of the husband to a divorce had become vested by the lapse of the statutory period of desertion, and could not be divested by his subsequent misconduct. This position is clearly untenable; striking at the roots of the doctrine of recrimination. It has never been denied that adultery by the plaintiff is a valid defense to a suit charging the defendant with the same offense. If the principle contended for in this case were established, the right to a divorce would vest at the commission of the first act of adultery (for which there is of course no time limit) and the defense of recrimination would be unavailable.

Stress was also laid upon the alleged causal relation between the desertion and the husband's adultery; the act of the woman being the inciting cause, it was said, of the husband's offense. There are not many cases involving this precise point. If the misconduct of one party is actually the proximate cause of that of the other spouse, the latter's misconduct cannot be taken advantage of. So where a husband and wife separated by mutual consent, the wife being given only from £2 to £4 a month for her support, it was held that the husband's conduct was the proximate cause of acts of adultery committed by the wife, and the bill for divorce was dismissed. *Hawkins* v. *Hawkins,* 10 P. D. 177.

Where the wife was a drug fiend and companion of prostitutes, though not herself unchaste, and neglect and non-support on the husband shown, the husband's bill was dismissed, the court saying: "The party complaining has been instrumental in producing the causes leading to the separation." *Finley* v. *Finley,* 8 Ky. L. Rep. 605, 2 S. W. 554. In a recent New York case the point was made that the plaintiff's own conduct (abandonment) justified the adultery for which he sought a divorce, but the suggestion was expressly repudiated. *Mattison* v. *Mattison,* 60 Misc. 573, 113 N. Y. Supp. 1024.

Where the plaintiff was sentenced to life imprisonment, and his wife later committed adultery, he was held entitled to a divorce. *Abshire* v. *Hanks,* 119 La. 425, 44 South. 186.

It would seem that each case must be decided on its own facts; certainly the precedents do not constitute a rule of law that abandonment is an excuse for adultery. See 2 BISH., MARR. DIV. and SEP., §§ 212, 362.

INSURANCE—LIFE INSURANCE—SUICIDE OF THE INSURED.—The insured, in good faith, took out a life insurance policy containing no stipulations

as to the effect of suicide, and payable to the plaintiff as beneficiary. He committed suicide while sane. *Held,* the plaintiff cannot recover. *Security Life Ins Co.* v. *Dillard* (Va.), 84 S. E. 656.

There can be no recovery on a policy not making suicide an excepted risk if the insurance was procured with the intent to commit suicide, for such concealment avoids the contract in which good faith is absolutely essential. *Smith* v. *National Benefit Society,* 123 N. Y. 85, 25 N. E. 197, 9 L. R A. 616 However, the authorities are in irreconcilable conflict as to the effect of suicide while sane on such a policy taken out in good faith. The principal case has the support of Federal and English authorities, which base their views on the ground that the assured does not assume the risk of such suicide; and that it is contrary to public policy to allow a recovery. *Ritter* v. *Mut. Life Ins. Co.,* 169 U. S. 139, 42 L. Ed. 693; *Hopkins* v. *Northwestern Life Ins. Co.* (C. C. A.), 94 Fed. 729. See *Moore* v. *Woolsey,* 4 El. & Bl. 242. The great weight of State authority is opposed to this view, on the ground that, in the absence of a stipulation to the contrary, the risk of suicide is assumed by the insurer and that the recovery is not contrary to public policy. *Morris* v. *State Mut. Life Ins. Co.,* 183 Pa. St. 563, 39 Atl. 52; *Campbell* v. *Supreme Conclave,* 66 N. J. L. 274, 49 Atl. 550, 54 L. R. A. 576; *Lange* v. *Royal Highlanders,* 75 Neb. 188, 110 N. W. 1110, 10 L. R. A. (N. S.) 666. Some courts make a distinction between policies in which the beneficiary takes a vested interest and policies payable to the estate of the insured, or in which the beneficiary has no vested interest as in those issued by fraternal societies. In the latter cases no recovery is permitted on the ground that to do so would be to allow one to profit by his own wrong. *Shipman* v. *Protected Home Circle,* 174 N. Y. 398, 67 N. E. 83, 63 L. R. A. 347; *Davis* v. *Supreme Council, Royal Arcanum,* 195 Mass. 402, 81 N E. 294. But the distinction is disregarded by the weight of authority. *Supreme Conclave* v. *Miles,* 92 Md. 613, 48 Atl. 845, 84 Am. St. Rep. 528. See *Parker* v. *Des Moines Life Ass'n,* 108 Iowa 117, 78 N. W. 826. And rightly so, since the rights of all the parties are determined by the contract of insurance, and the considerations of public policy are essentially the same whether the beneficiary holds a vested interest in the policy or not, or whether the policy is payable to the estate of the insured or to a beneficiary. RICHARDS, INSURANCE (3 Ed.), § 367.

MASTER AND SERVANT—AUTOMOBILES.—The defendant having been driven in her automobile to a certain destination, directed her chaffeur to return for her after several hours. The chaffeur's general instructions were that in such cases he should take the car directly to the garage and leave it there during the interval. In this case, instead of doing so, he drove the car off in a different direction on an errand of his own. In the course of his return from this expedition, he negligently ran down and killed the plaintiff's intestate. *Held,* the defendant is not liable. *Tyler* v. *Stephan's Adm'x* (Ky.), 174 S. W. 790.

The owner of an automobile has been held a practical insurer against his chaffeur's negligence, on the ground that an automobile is a danger-